

*** IN THE HIGH COURT OF DELHI**

AT NEW DELHI 10

+ W.P.(C) 12428/2009 & CM APPL 12874/2009

DEPUTY COMMISSIONER OF POLICE
Petitioner Through Mr. Pawan Sharma, Standing
counsel with Mr. Sanjay Lao, APP and Mr. Laxmi
Chauhan, Advocate

along with SI Anil Kumar, Anti Corruption Branch

versus

D.K.SHARMA Respondent In person.

CORAM: JUSTICE S. MURALIDHAR

ORDER

15.12.2010

1. The Deputy Commissioner of Police, Anti Corruption Branch ('DCP') is aggrieved by an order dated 25th September 2009 passed by the Central Information Commission ('CIC') directing the Petitioner DCP to provide to the Respondent copies of the documents sought by him. These documents include certified copies of D.D. entry of arrest of the Respondent and various other documents relating to the investigation of the case, under FIR No. 52 of 2003. The CIC found the denial of the information by the Petitioner by taking recourse of Section 8 (1) of the Right to Information Act, 2005 ('RTI Act') to be untenable. It was held that none of the clauses under Section 8 (1) covered subjudice matters and therefore, the information could not be denied.

2. This Court has heard the submissions of Mr. Pawan Sharma, learned counsel appearing for the Petitioner, and the Respondent who appears in W.P. (Civil) 12428/2009 Page 1 of 3 person.

3. Mr. Pawan Sharma referred to Section 172 (2) of the Code of Criminal Procedure, 1973 ('CrPC') and submitted that copies of the case diary can be used by a criminal court conducting the trial and could not be used as evidence in the case. He submitted that even the accused was not entitled, as a matter of right, to a case diary in terms of Section 172 (2) CrPC and that the provisions of the RTI Act have to be read subject to Section 172 (2) CrPC. Secondly, it is submitted that the trial has concluded and the Respondent has been convicted. All documents relied upon by the prosecution in the trial were provided to the Respondent under Section 208 CrPC. The Respondent could have asked for the documents sought by him while the trial was in progress before the criminal court. He could not be permitted to invoke the RTI Act after the conclusion of the trial.

4. The Respondent who appears in person does not dispute the fact that the trial court has convicted him. He states that an appeal has been filed which is pending. He submits that his right to ask for documents concerning his own case in terms of the RTI Act was not subject to any of the provisions of the CrPC. Finally, it is submitted that no prejudice would be caused to the Petitioner at this stage, when the trial itself has concluded if the documents pertaining to the investigation are furnished to the Respondent.

5. The above submissions have been considered.

6. This Court is inclined to concur with the view expressed by the CIC that in order to deny the information under the RTI Act the authority concerned would have to show a justification with reference to one of the specific clauses under Section 8 (1) of the RTI Act. In the instant case, the Petitioner has been unable to discharge that burden. The mere fact that a criminal case is pending may not by itself be sufficient unless there is a specific power to deny disclosure of the information concerning such case. In the present case, the criminal trial has concluded. Also, the investigation being affected on account of the disclosure information sought by the Respondent pertains to his own case. No prejudice can be caused to the Petitioner if the D.D. entry concerning his arrest, the information gathered during the course of the investigation, and the copies of the case diary are furnished to the Respondent. The right of an applicant to seek such information pertaining to his own criminal case, after the conclusion of the trial, by taking recourse of the RTI Act, cannot be said to be barred by any provision of the CrPC. It is required to be noticed that Section 22 of the RTI Act states that the RTI Act would prevail notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force.

7. Consequently, this Court is not inclined to interfere with the impugned order dated 25th September 2009 passed by the CIC.

8. The petition and the pending application are dismissed. S.MURALIDHAR, J

DECEMBER 15, 2010

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